IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.140 OF 2003

Royal Lifters & Excavators P.Ltd. Plaintiff

versus

M/s Nila Baurt Eng.Ltd .. Defendant

...

Mr. Karl Shroff i/b Firdosh & Co for Plaintiff.

Mr.S.N.Nair for Defendant.

CORAM : D.G. KARNIK, J

DATED : 31st January 2005.

P.C:-

1. This suit is listed for hearing under Rule 224 of the Bombay High Court (Original Side) Rules, 1980.

2. The plaintiff has filed this suit for recovery of the amount due under 8 invoices for charges of utilisation of machineries. On a Summons for Judgment taken out by the plaintiff and on hearing the parties this Court by an order dated 11th October, 2004 (Coram:D.G.Deshpande, J) granted conditional leave to

the defendant to defend the suit on deposit of Rs.35,00,000/-in this Court within 8 weeks. The defendant has not deposited the money and a certificate of non-deposit is tendered by the learned counsel for the plaintiff. The certificate is taken on record and marked Exhibit A. The plaintiff has also filed on record the original documents under a list. The documents are taken on record and collectively marked Exhibit B.

3. After negotiations the plaintiff offered on hire to the defendant excavators and rock breakers. On defendants acceptance the plaintiff allowed the defendant to use the excavators and rock breakers and thereafter issued bills for hire charges. The original bills are produced on record. From time to time the plaintiff demanded the payment. As the defendant failed and neglected to make the payment the plaintiff by registered letters dated 31st October, 2004 and 9th October, 2002 demanded the payment. Office copies of the letters of demand as also the acknowledgment are filed on record. Despite the demands the defendant failed and neglected to make the payment Hence, the plaintiff has filed this suit. On the basis of the documents produced by the plaintiff,

I am satisfied that the defendant is liable to pay to the plaintiff the sum claimed in the suit. No interest is claimed by the plaintiff prior to the date of the suit though invoices mentioned interest at 24 % p.a. In the circumstances, I see no reason for not passing a decree in favour of the plaintiff. The plaintiff is also entitled to a decree under clause (b) of sub-rule 6 of Rule 3 of Order XXXVII of the Code of Civil Procedure.

4. Hence the suit of the plaintiff is decreed as follows:

" The defendant shall pay to the plaintiff Rs. 38,89,708/- and all costs of the suit."

D.G.KARNIK, J